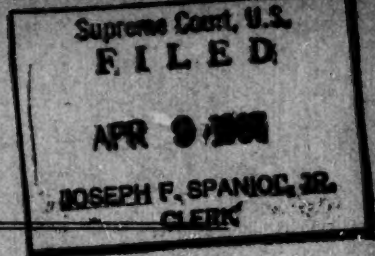


No. 86-1450



IN THE
Supreme Court of the United States
OCTOBER TERM, 1986

PETROS A. PALANDJIAN,

Petitioner,

v.

ASHRAF PAHLAVI,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

In opposing a motion for summary judgment grounded upon the Massachusetts statute of limitations, did petitioner introduce evidence sufficient to raise a triable issue of "duress" for tolling purposes under Massachusetts law?

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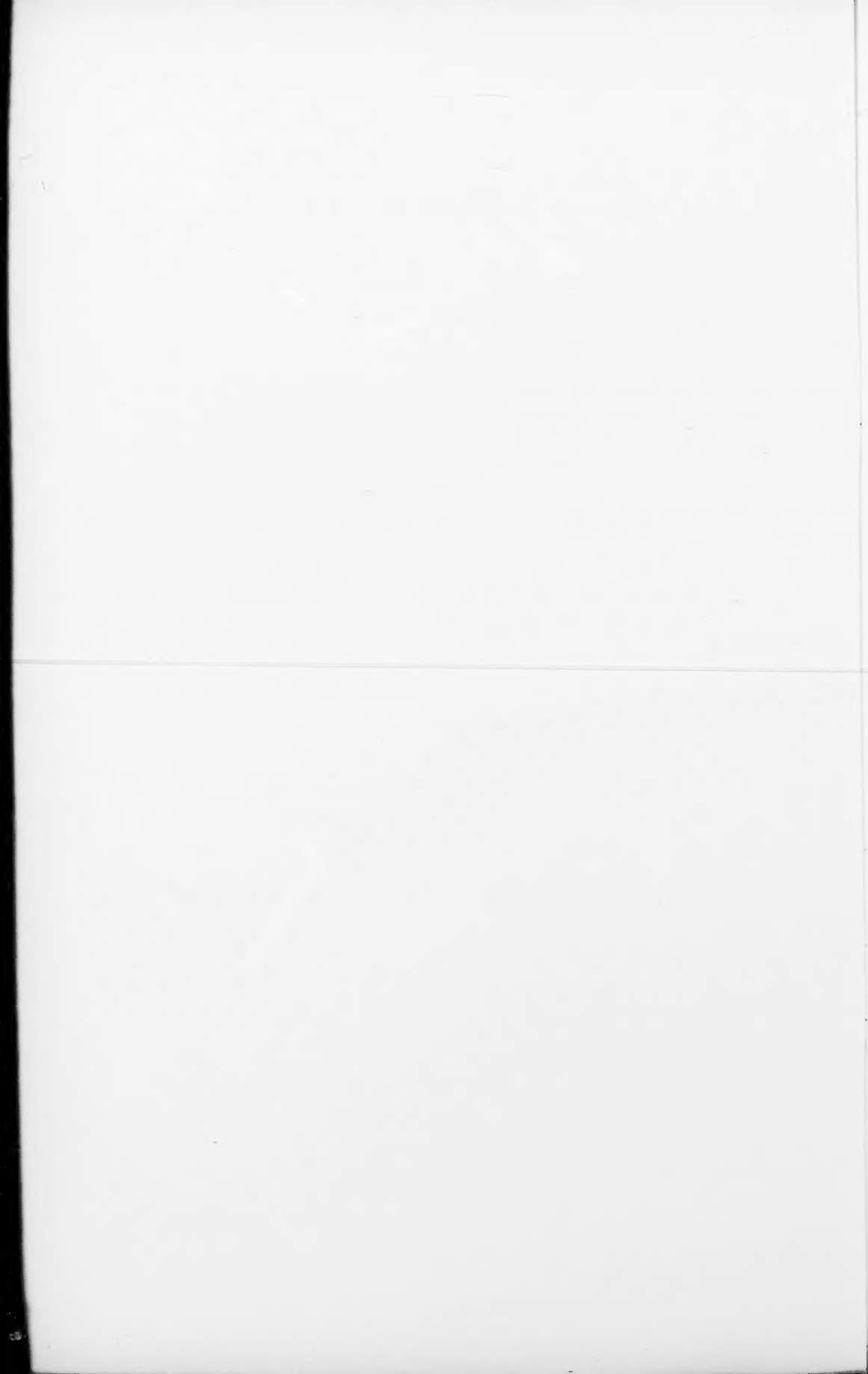
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JUDGMENT BELOW

Since the judgment sought to be reviewed is not included in Petitioner's Appendix ("Pet. App."), it is reproduced in the Appendix to this brief, at A1. This judgment is listed among "Decisions Without Published Opinions" at 808 F.2d 1513.

STATEMENT OF THE CASE

Proceedings Below

This diversity case, commenced in 1983, concerned alleged dealings between petitioner Petros A. Palandjian ("Palandjian"), a Massachusetts construction industry executive, and respondent Ashraf Pahlavi ("Pahlavi"), a sister of the late Shah of Iran, from 1966 to 1971. Palandjian alleged that in 1966 he entered into an oral contract with Pahlavi to

develop a seaside resort community in Iran, but that Pahlavi breached the contract in 1970 by expelling Palandjian from the project. (Complaint ¶¶ 6-9, 19-20, 34; Pet. App. 37a-40a, 42a.) Palandjian further alleged that in 1970 and 1971 Pahlavi's representatives coerced Palandjian into relinquishing partial ownership interests in two Iranian companies, and thereby converted his property. (Complaint ¶¶ 21-22, 36; Pet. App. 40a, 43a.)

Pahlavi moved for summary judgment on the ground—among others—that the action was barred by the applicable Massachusetts statutes of limitations for contract (6 years) and tort (2 years). The last of Palandjian's claims for relief would have accrued in 1971, when Palandjian, in the presence of his attorney, allegedly signed away certain property rights in response to veiled threats by an alleged representative—since deceased—of Pahlavi. (Complaint ¶ 22; Pet. App. 40a.) Palandjian asserted that it was not until 1983 that he felt he could file suit on these claims without fear of retaliation (Palandjian Affidavit ¶¶ 24-25; Pet. App. 14a), and argued that the Massachusetts statutes of limitations were therefore tolled by reason of “duress.” But he did not come forward with any evidence that he was actually subjected to duress at any time in the dozen years that he withheld suit following the accrual of his final claim for relief. On the contrary, Palandjian's own description of his relationship with Pahlavi during that period was as follows:

From 1971 through 1982, I remained in contact with Pahlavi, speaking with her by phone and periodically meeting with her in Geneva and New York. During these calls and meetings, I raised the issue of the monies she owed me . . . ; she acknowledged her debts to me and said I would be paid.*

(Palandjian Affidavit ¶ 22; Pet. App. 13a.)

* Under Massachusetts law, such an alleged oral acknowledgment would have no effect on the running of the statute of limitations. Mass. Gen. Laws ch. 260, § 13.

Decisions Below

The District Court for the District of Massachusetts held that, since “[t]he record does not contain any evidence of any threat or coercive act by the defendant after 1972, despite the fact that Palandjian communicated regularly with Pahlavi over the course of the next decade,” and “[i]n particular, there is no evidence of any threat or act to deter the filing of this lawsuit,” “the averments of the affidavits opposing summary judgment fall short of establishing any material issue of fact” warranting a trial on Palandjian’s claim of duress. (Pet. App. 81a-82a.) Accordingly—after some further litigation of no significance for present purposes—the District Court entered summary judgment for Pahlavi, saying:

While circumstances may be imagined where duress might toll a statute of limitations under the law of Massachusetts, even a generous reading of the plaintiff’s affidavits and supporting materials does not, upon the reasoning expressed in this court’s original memorandum, justify the application of a duress exception under Massachusetts law in these circumstances.

(Pet. App. 60a.)

The Court of Appeals affirmed almost summarily. In a brief opinion labeled “Not for Publication,” that court, likewise noting the absence of any allegation of threats or coercion during the 12-year delay in filing suit despite Palandjian’s own avowal that he repeatedly confronted Pahlavi about her alleged debts to him during that time, unanimously concluded:

Even if appellant subjectively feared retaliation from defendant if he filed a lawsuit, we believe Massachusetts would rule that he failed as a matter of law to establish that he was actually under duress.

(Pet. App. 99a-100a.)

REASONS FOR DENYING THE WRIT

Petitioner makes no claim that the decision of the Court of Appeals creates a conflict among the circuits, or raises an issue of importance to anyone other than the parties. The sole ground advanced for review is that the court below misapplied well-settled principles of procedure for deciding summary judgment motions, and thus reached an incorrect result. But in fact the result in this case was reached by correctly following routine federal procedure to decide a narrow question of Massachusetts law as applied to Palandjian's unique factual allegations.

I. THE COURTS BELOW FOLLOWED PROPER FEDERAL PROCEDURE

Palandjian characterizes this case as involving an issue of interpretation and application of Rule 56 of the Federal Rules of Civil Procedure. (Petition i.)* Specifically, he asserts that the court below failed to follow the universally-recognized principles that the evidence on a motion for summary judgment must be viewed in the light most favorable to the party opposing the motion (*id.* 12-17), and that summary judgment is seldom possible where resolution of a material issue would require assessment of a party's credibility or state of mind (*id.* 17-20).

But these principles were never at issue, because for the purposes of Pahlavi's motion both of the lower courts accepted as true Palandjian's version of the facts—including his representations as to his own subjective fear.

Thus the courts below took it as given that Palandjian had been subjected to actual coercion causing him to give up certain property in 1970 and 1971. Pet. App. 81a (District Court); *id.* 97a (Circuit Court). And they credited Palandjian's assertion that he refrained from filing suit from 1971

* This purported federal question is raised here for the first time. Not one of the fifteen federal cases cited in the petition was referred to by Palandjian in either of the courts below.

until 1983 because he feared retaliation. *Id.* 81a (District Court); *id.* 99a-100a (Circuit Court). They concluded, however, that under Massachusetts law the mere existence of subjective fear from 1971 to 1983 would not suffice to show that Palandjian was under duress during that time. *Id.* 81a (District Court); *id.* 99a-100a (Circuit Court). In the absence of any evidence—or even any allegation—of threats or coercion of any kind during the relevant period, there was no factual basis for Palandjian’s tolling claim as a matter of Massachusetts law; hence summary judgment was required. *Celotex Corp. v. Catrett*, ___ U.S. ___, 106 S. Ct. 2548, 2555 (1986).

II. THE DECISION BELOW DEPENDED SOLELY UPON APPLICATION OF STATE LAW TO UNIQUE FACTS

The decision below is confined to the particular factual allegations of this case. By Palandjian’s own account, he continued to deal with Pahlavi for 12 years following the accrual of his final claim for relief, during which time, as the Court of Appeals noted, he “repeatedly took actions similar in kind to filing suit without provoking the slightest suggestion of a threat.” (Pet. App. 99a.) It was specifically “in light of this subsequent history” that the court below concluded that Massachusetts would not overlook Palandjian’s disregard of its statutes of limitations. (*Id.*)

In view of the limited significance of this decision, the Court of Appeals ordered that its opinion not be published, thereby bringing it within that court’s rule prohibiting citation of its unpublished opinions as authority in unrelated cases. (Rule 14 of the First Circuit Rules, reprinted in full in the Appendix to this brief at A2.) As the court explains in that rule, its determination not to write a full opinion for publication “mean[s] that no new points of law, making the decision of general precedential value, are believed to be involved.”

In holding that Palandjian’s claims regarding alleged events of 16 to 21 years ago are barred, the court below merely recognized that, in this dispute between Palandjian

and Pahlavi, Massachusetts would find no reason to set aside the important policies underlying all statutes of limitations as articulated by this Court:

Statutes of limitation, like the equitable doctrine of laches, in their conclusive effects are designed to promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared.

Order of Railroad Telegraphers v. Railway Express Agency, Inc., 321 U.S. 342, 348-49 (1944).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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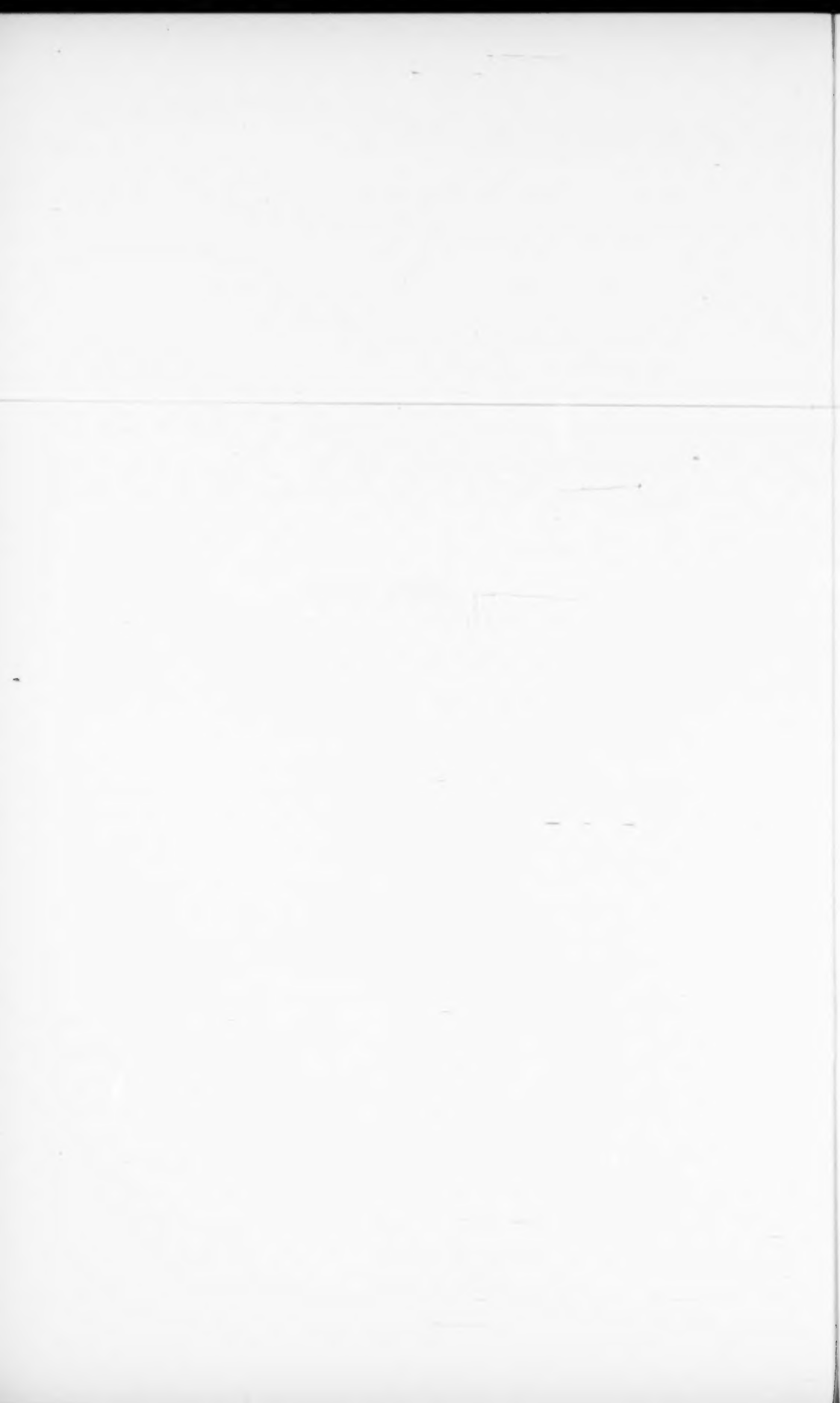
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April 7, 1987

APPENDIX



JUDGMENT OF THE
UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

United States Court of Appeals
FOR THE FIRST CIRCUIT

No. 86-1269.

PETROS A. PALANDJIAN,
Plaintiff, Appellant.

v.

ASHRAF PAHLAVI,
Defendant, Appellee.

JUDGMENT

Entered: December 8, 1986

This cause came on to be heard on appeal from the United States District Court for the District of Massachusetts, and was argued by counsel.

Upon consideration whereof, It is now here ordered, adjudged and decreed as follows: The judgment of the District Court is affirmed.

By the Court:

FRANCIS P. SCIGLIANO

Clerk.

By: RICHARD W. GORDON
Chief Deputy Clerk

**RULE 14 OF THE RULES OF THE UNITED STATES
COURT OF APPEALS FOR THE FIRST CIRCUIT**

RULE 14. OPINIONS

Because of the increase in filings, the court finds itself unable to write opinions, or full opinions, in every case. The absence of such does not necessarily mean that the case is considered unimportant. It does mean that no new points of law, making the decision of general precedential value, are believed to be involved.

Because unpublished memoranda and opinions of this and other courts usually fail to disclose fully the rationale of the court's decision, and because they are not uniformly available to all persons, they are never to be cited in unrelated cases, unless they are in the process of being published. For this court's Plan for Publication of Opinions see Appendix B.

